1944

File No Agri Debtors Relief II/42

Legal Department

B BRANCH

Subject:— Rules and Notification under the Bombay Agricultural Debtors Relief Act 1939

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File No. Agri Debtors Relief II/42.

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R.I.No.3674
19/4/1944.

Submitted.
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The R.L.A.is requested to ~~xx~~ amend section 73 of the Bombay Agri-cultural Debtors Relief Act, 1939, as a consequence of the amendment of section 37 proposed in the Bill to amend the said Act sent to the R.L.A. The R.L.A. is also requested to state whether the position stated in para 3 of R.D. note at pp.3-6 is correct.

2. In ~~/new~~ section 37 proposed to be inserted by clause (14) of the draft Bill to amend the Bombay Agricultural Relief Act, 1939, it is proposed to transfer all the pending suits etc. before any civil or revenue court to the Board under the Act. Section 73 provides for a bar of civil suits or porceedings in respect of any matter pending before the Board or the court under that Act or the validity of any procedure or the legality of any award, order or decision of the Board or of the court or to recoveries of any debt made payable under the award. That has nothing to do with the transfer of suits or other matters from a court to the Board. No revenue court has jurisdiction to entertain any suit or proceeding in respect of the three matters specified in section 73. No amendment of section 73 as suggested by R.D. is therefore necessary.

3. The position stated in para.3(1) of R.D. note at p.3 ante with regard to assistance suits under sections 86 and 87 of the Bombay Land Revenue Code of 1879 is correct. The revenue courts which exercise jurisdiction under those sections are not civil courts and under section 37 of the Agricultural Debtors Act, as it stands, assistance suits cannot be transferred to the courts. Under sub-section(4) of section 87 of the Land Revenue Code nothing in that section prevents either party and therefore the tenant from having recourse to the civil court to recover from the other such amount as may have been levied from him ~~xx~~ in excess of what was due. Similarly if the claim is rejected under the ~~xxxx~~ Land Revenue Code the superior holder can mention it in applications under section 17 (2) of the .....

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Agricultural Debtors Relief Act or in their statements under section 19(1) thereof.

Clause (14) of the Bill to amend the Agricultural Debtors Act provides in new section 37 for the transfer of all suits and pending matters from a revenue court as well to the Board.

4. A suit under section 5(1) of the Mamlatdar's Court Act 1906 (Bom. II of 1906) is a suit to give possession of premises used for agriculture etc. or to restore the supply of water from any well and a suit under section 24 and section 20 of the Tenancy Act, 1939 (Bom.XXIX of 1939) is a suit for ejectment. Such a suit will not come within the cognizance of the Debt Adjustment Board.

It is also true that under the proviso to section 54(2)(i) of the Agricultural Debtors Act a Board has to make an order for the delivery of possession even though the time fixed for the payment of secured debt has not arrived or the secured debt has not been completely discharged..

In the case of a debtor who has no means to pay the debt the Board will declare him an insolvent under section 68(1) because of the inadequacy of the paying capacity of the debtor to pay the total amount of his debts or because the debts due from him cannot be liquidated by annual instalments not exceeding 25 in number.

5. In the case of a debtor whose land has passed into the possession of his creditor, section 45 empowers the Board, save in the case specified in sub-section (2), to declare any transaction purporting to be a sale of land belonging to a debtor to be a transaction in the nature of a mortgage if it is satisfied that the circumstances connected with the sale would show it to be in the nature of a mortage and after doing so to order the delivery of the property, subject to such conditions as it may impose in the award, to the debtor under section 54(2)(i).

6. The position therefore as stated in para.2 of R.D. note appears generally to be in order.

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19/4.

Office of the R.L.A.

It appears from the report in the issue of "the Bombay Sentinel" dated the 4th April 1944 that as soon as a tenant mortgagor has filed an application for the adjustment of his debts under the Bombay Agricultural Debtors Relief Act, 1939, or a notice thereof has been served upon the creditor, the latter with a view to evade the provisions of that Act forthwith resorts to the device of filling against the former (i) an assistance suit under section 86 of the Land Revenue Code, 1879, or (ii) possessory suit under section 5 of the Mamlatdars' Courts Act, 1906 or (iii) an application under section 24 read with section 5(2)(b) of the Bombay Tenancy Act, 1939. The question referred to the R.L.A. for consideration is whether any of these devices can circumvent the provisions of the Bombay Agricultural Debtors Relief Act.

2. Device (i).- It is true that the jurisdiction of a revenue court to entertain the claim of a superior holder for assistance in recovery of rent from the inferior holder under section 86 of the Bombay Land Revenue Code, 1879, even after the latter has filed an application for the adjustment of his debts, would not be ousted under section 73 of the Bombay Agricultural Debtors Relief Act, such court being not a civil court. But an application for assistance under section 86 of the Land Revenue Code is required to be made within the revenue year or within the year of tenancy in which the said rent or land revenue became payable. Even assuming that an application is made within the prescribed time, it is still open to a revenue court to refuse to grant assistance if it appears to it that the question at issue between the parties is of a complicated or difficult nature. When a tenant mortgagor has already filed an application for adjustment of his debts alleging that the transaction relating to the land in his possession as a tenant was an ostensible sale, the revenue court would, in all probability, consider the claim for assistance in recovery of rent in respect of such land from that tenant-mortgagor to be of a complicated or difficult nature and refuse assistance. Even if assistance is granted and the rent recovered from the tenant-mortgagor, the Board while taking accounts on its holding that the transaction is really mortgage will certainly give credit for the amount

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recovered through the revenue court. Consequently the first device does not effectuate circumvention of the Bombay Agricultural Debtors Relief Act.

3. Device (ii).- A court presided over by a Mamlatdar under the Mamlatdars' Court Act, 1906, is a civil court (see section 5(1) of the Act and 17 Bom. 645 at p.647). Consequently a possessory suit in the court of a Mamlatdar under section 5 of the Mamlatdars' court Act by a superior holder after his tenant mortgagor has filed an application for the adjustment of his debts, would be barred under section 73 of the Bombay Agricultural Debtors Relief Act.

4. Device (iii) .- Section 24(1) of the Bombay Tenancy Act, 1939, can be resorted to by a tenant for the restoration of possession and not, it would appear, by a superior holder for evicting his tenant (please see the recent opinion of the R.L.A. No.3132 dated 26.4.44). The relevant provision is section 20 of the Bombay Tenancy Act. Under that provision relief can be sought only in a civil court. But such claim for eviction of a tenant-mortgagor who has filed an application for the adjustment of his debts would be barred by section 73 of the Bombay Agricultural Debtors Relief Act.

5. It would therefore appear that none of these devices can succeed in circumventing the provisions of the Bombay Agricultural Debtors Relief Act and no serious notice of the comments made in the issue of the "Bombay Sentinel" dated the 10th April 1944 need be taken.

Sd/- P.N.M.
2/5/1944.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 3219, dated the 3rd May 1944.

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Office of the R.L.A.

Section 60 of the Bombay Agricultural Debtors Relief Act, 1939, provides that an award made under section 54 or 55 shall direct the party who has been ordered to pay the costs to pay one-half of the difference between the court-fee actually paid on the application for adjustment of debts or in the case of suits and applications for execution transferred to the Board under section 37 on the plaint in the suit or on such applicationand the fee which would have been payabl under section 7 of the Court-fees Act, 1870, as if the application for adjustment of debts, or the suit or the application for execution had been a suit for money and the total amount of the debts declared due from the debtor had been the amount claimed in such suit. Sub-section (2) of that section provides that notwithstanding anything contained in any law such fee shall be the first charge on the property of the party ordered to ~~xxx~~ pay the cost. It is nowhere laid down in the/form of court-feestamps and in the absence of such a provision, it would not be proper for the party who has been ordered to pay the costs to pay the amount of Court fees in the form of such stamps; the party concerned would have to pay the amount of court-fees in cash and in that case a receipt in Form No. 17 annexed to the Bombay Agricultural Debtors Relief Rules, 1941, can be passed. From the letter of the Chairman, D.A Board, Pandharpur, at page 1 ante, it appears that the court-fees payable under section 60 of the Act are collected in the form of stamps, but as pointed out above such fees need not be collected in the form of stamps and if sums equivalent to the amount of court-fees payable unde-r section 60 are accepated there would be no difficulty in passing any receipt in Form No.17 under the rules as they stand.

/ Act that the court-fees payable under section 60 shall be paid in the....

2. The provisions of section 60 which provide for the charging of court-fees on awards under section 54 or 55 are similar to the provisions contained in Order 33, rules 10 and 11 of the Civil Procedure Co Those rules also provide for the payment of court-fees by the party concerned. It does not appear that under those rules it is necessary for the party concerned to pay the amount of court-fees in the form of court-fee stamps. Through receipts are provided for in respect of

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cash payments (Book of Receipts), no form for receipt of court-fee stamps seems to have been prescribed under the High Court Civil Manual (see rules on page 218 of the High Court Civil Manual, Vol. I and Form A of the receipt on page 417 of the High Court Civil Manual, Vol. II, also rules 3 and 9 of Ch. XI at pages 140-141 of the Manual Vol. I). The question of resorting to rule 35 of the Bombay Agricultural Debtors Relief Rules, 1941, for the purpose of following the procedure laid down in the Civil Procedure Code in relation to receipts of court-fee stamps does not therefore arise.

2. 3. In regard to the question of passing receipts for payments made on account of process fee, travelling allowance and subsistance allowance, attention is invited to rule 24 of the Bombay Agricultural Debtors Relief Rules, 1941. Sub-rule (1) of that rule provides that a process fee for summoning witnesses shall be paid in the form of court-fee stamps. Subrule (2), however, of the said rule, which provides for the payment of subsistence allowance and travelling allowance to witness requires the amount of such allowance to be deposited in advance with the Board. It does not provide for the payment of these allowances in the form of court-fee stamps. The statement made at 'A' in R.D. note at page 5 ante is not therefore correct with reference to subsistence allowance and travelling allowance. The payment of subsistence allowance and travelling allowance is made in cash and therefore the receipt for such payment can be made in Form 17. It does not appear that any receipt for payment of court-fee stamps is necessary. Rule 36 provides for process register (see Form No. 14 annexed to the rules). It seems that an entry in the process register regarding the receipt of court-fees stamps on account of process fee would be sufficient.

Sd/- P.N.N.
8/9/44.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 6343, dated the 11th September 1944.

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M.V.V.
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